



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7880571

Date: MAR. 17, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an author and screenwriter, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, determining that the Petitioner did not establish that she satisfied any of the ten initial evidentiary criteria for this classification, of which she must meet at least three. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

II. ANALYSIS

The Petitioner is a published novelist and a screenwriter for several Chinese television series. She also wrote and directed the feature film [REDACTED] which was released internationally in 2015.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director found that the Petitioner submitted evidence relating to six of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3) but did not establish that she met any of them. On appeal, the Petitioner asserts that she meets four criteria, relating to lesser nationally or internationally recognized awards, published materials in major media, judging the work of others, and commercial success in the performing arts.¹ After reviewing all of the evidence in the record, we find that the Petitioner has not demonstrated that she meets at least three criteria.

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

In order to fulfill this criterion, the Petitioner must demonstrate that the Beneficiary's prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or

¹ We note that the Director determined that the Petitioner initially submitted evidence related to the authorship of scholarly articles and leading or critical roles criteria at 8 C.F.R. § 204.5(h)(vi) and (viii), respectively, but did not satisfy these criteria. The Petitioner does not contest these issues on appeal and therefore we deem them to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

² *See* USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

On appeal, the Petitioner claims that she meets this criterion based on the following awards:⁴

- 2016 [] Award for Best Screenwriter at the [] Film Festival (awarded to Petitioner)
- 2016 [] Film Award for Excellent Feature Film (awarded to the film [])

With respect to the [] award, the Petitioner previously submitted: a copy of the award certificate naming her as the winning screenwriter; a screenshot from the website of the [] Film Festival held in 2018; an article about the closing ceremony of the [] Film Festival which mentions the Petitioner's receipt of the screenwriting award; an entry regarding the [] Award" from the online Chinese encyclopedia *Baike* (www.baike.com/wiki); and a letter from [] attesting to the award's national recognition. On appeal, the Petitioner provides a second published article regarding the closing ceremony of the [] Film Festival.

The evidence is sufficient to establish that the Petitioner was the recipient of the 2016 [] award for screenwriting for the film []. However, we agree with the Director that the record does not establish that it is a nationally or internationally recognized award for excellence.

The information provided on the festival's website indicates that [] Film Festival "is the first national film festival in New China []" and that it has been held bi-annually since 1992. The website further reflects that the film festival is "guided by the National Film Bureau, hosted by the Central Radio and Television General Bureau, the [] People's Government, and the [] People's Government." The limited background information provided here is insufficient to establish the level of national or international recognition associated with the festival's [] awards. Although the submitted screenshot shows that the festival's website includes a section specifically discussing the [] Award," the Petitioner did not provide screenshots from that section.

The Petitioner also submitted background information regarding the [] Awards from the *Baike* online encyclopedia, which also includes a list of previous award winners. According to materials submitted by the Petitioner, *Baike* is a user-edited online encyclopedia, similar to *Wikipedia*. As there are no assurances about their reliability, the content from open, user-edited Internet sites will be accorded no evidentiary weight. See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

In support of her claim that the [] is a nationally recognized award for excellence in the Chinese film industry, the Petitioner also submitted a letter from [] who is claimed to be

³ *Id.*

⁴ The Petitioner previously claimed that she also meets this criterion based on her receipt of a First Class of Award for [] for her novel [] in 1992, and based on her receipt of the honorary title [] issued by the China Radio and Television Association in 2011. On appeal, the Petitioner claims eligibility based on the film industry awards mentioned above and does not address these two awards.

an expert in the field. The letter states, “I hereby prove that the [redacted] Film Festival is a national film festival in China” and “[t]he [redacted] Award is the national award of China.” [redacted] indicates that the festival is organized by “the highest administrative authority of the Central Government of China in managing movies” thereby making the festivals it organizes “China’s national awards.” According to the letter, the [redacted] Film Festival is “known as one of the China’s four major film festivals” and “Chinese filmmakers take pride in winning these awards.”

We note that, although [redacted] states that they are a member of the “China Film Association,” the letter is not accompanied by evidence of this individual’s background or qualifications, or any background regarding the association they claim to represent. USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, the submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* USCIS may give less weight to an opinion that is not corroborated. *Id.*

Finally, as noted, the record contains two brief online articles about the closing ceremony of the 2016 [redacted] Film Festival, at which the festival’s [redacted] Awards were given. One article is from *China News Network* (www.chinanews.com). The second article, although published by the website www.xinhuanet.com, identifies *Guangming Daily* as the article’s source. The article is accompanied by background information regarding *Guangming Daily* from that publication’s own website, (www.gmw.cn). The Petitioner emphasizes that *Guangming Daily* is one of China’s major newspapers, thereby establishing that the awards ceremony received major media coverage. However, we cannot determine that this newspaper actually published the article absent evidence that it appeared in its print or online edition. Further, the two submitted articles are not sufficient to establish that the [redacted] award winners receive a level of media coverage that is commensurate with a nationally or internationally recognized award in the entertainment industry.

Regarding the 2016 [redacted] Award for Excellent Feature Film, the Petitioner submitted a copy of the award certificate; an online article from *China Writers* (www.chinawriters.com.cn) about the [redacted] Awards Ceremony held in [redacted] in [redacted] 2016; and another expert opinion letter from [redacted]

In order to fulfill this criterion, the Petitioner must demonstrate her own receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Here, the Petitioner did not receive the [redacted] Award; rather, the film [redacted] and its investors and production companies are the named recipients. The second letter from [redacted], writing in their capacity as a professor at the [redacted] Film Academy, indicates that the [redacted] Film Award is one of the top three awards in the Chinese film industry and states:

Since the [redacted] Film Awards Excellent Film Award is awarded to the film, the copyrighted investor becomes the named recipients on the award certificate. But what it really rewards is actually the screenwriter, the director and the actor/actress. All industry insiders and the general audience will attribute the success of the film to screen writer, the director and the actor/actresses, not to the investors.

However, the Petitioner submitted little background information regarding the [redacted] film awards, such as a complete list of all of the award categories from the organizer of the awards or another reliable source. The submitted article from *China Writers* indicates that 20 awards were given at the [redacted] Film Awards ceremony, including “the Best Feature Film Award and each individual award.” If the [redacted] Film Awards bestow “individual awards,” then it is reasonable to believe that those include awards for roles such as acting, directing, and screenwriting. If the organizers intended to recognize the Petitioner individually for her role as director and/or screenwriter of [redacted] it appears that they could have done so by bestowing her with an individual award. While we recognize that both of these roles are essential in filmmaking, it remains that the Petitioner was not the recipient of the [redacted] Film Award and therefore the award does not satisfy the plain language of this regulation.

For the reasons discussed, the Petitioner has not established that she meets this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted copies of articles from both English-language and Chinese publications in support of this criterion. While some of the published materials appeared in major media including *The New York Times*, *Variety*, and *The Hollywood Reporter*, the articles from these sources were reviews of the movie [redacted]. While these and other articles⁵ identify the Petitioner as the film’s director, they are not articles about her but rather reviews of the film she wrote and directed. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).⁶

Several of the published articles from Chinese media are about the Petitioner and relate to her work as a screenwriter and director; however, these articles are not accompanied by evidence that they were published in professional or major trade publications or other major media. The evidence includes an online article published by *China Daily* (www.chinadaily.com.cn), which was accompanied by a *Wikipedia* entry regarding this publication. We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. *See* General Disclaimer, *Wikipedia*, https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer (last visited Mar. 13, 2020); *see also Badasa*, 540 F.3d at 910-11.

The Petitioner also provided online articles that are about her and relate to her work which were published by *Multidimensional News* (culture.dwnnews.com), *China News Network* (www.chinanews.com, citing *Literary Gazette* as its source), *Netease* (money.163.com, citing *Times*

⁵ The Petitioner also provided online reviews of [redacted] published by *Screen Daily*, *China Source* (a blog), *Sina Entertainment*, and *Film Journal*, as well as capsule summaries of the film that accompanied the announcement of its release in the publications *Screen Anarchy* and *SF Weekly*. Like the other reviews, these articles are not about the Petitioner.

⁶ *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

Weekly, *Guangzhou* as its source), *Phoenix Entertainment* (ent.ifeng.com), and *People's Network* (people.com.cn), citing *Beijing Morning Post* as its source. In addition to the online articles, the Petitioner submitted two print articles, one published by *Oriental Outlook*, and one by *Beijing Entertainment News*.

None of these articles was accompanied by supporting evidence demonstrating that they were published in professional or major trade publications or other major media. As it relates to *Literary Gazette*, *Oriental Outlook*, and *Beijing Entertainment News*, the Petitioner provided screenshots from *Baidu* encyclopedia describing these publications, a website that is claimed to be comparable to *Baike* or *Wikipedia*. However, for the reasons already discussed, on-line, open source encyclopedia articles are not a reliable source of information. With respect to *Times Weekly*, the Petitioner provided background information regarding this publication from a website called *World of Reading* (sdzk.dooland.com) which provides a circulation figure for the newspaper. Regardless, even if we determined that the circulation figures provided on this website and on *Baidu* were reliable, the Petitioner did not provide additional evidence demonstrating the significance of those figures and comparative circulation or distribution figures in support of a claim that any of these publications would be considered major media consistent with this regulatory criterion.⁷

For the foregoing reasons, the Petitioner did not establish that she meets this criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

In order to meet this criterion, the Petitioner must show that she has not only been invited to judge the work of others, but also that she actually participated in judging of the work of others in the same or allied field of specialization.

The Petitioner initially submitted an undated "Letter of Appointment" appointing her to be a "Judging Expert for the [redacted] of [redacted] National Teenager Reciting Performance of Creative Works" for the period "[redacted] 2018." The letter was attributed to three competition sponsors which included the Chinese Poetry Society Reciting Performance Committee and the Beijing Education Association.

She also provided an online article which indicates that the launching ceremony for the [redacted] of the competition was held on [redacted] 2017, eight months before her appointment as a judge began. Another online article was about the finals of the [redacted] of the [redacted], which lasted 180 days and ended in [redacted] 2017.

Later, in response to a request for evidence, the Petitioner submitted a "Verification" from [redacted] who states that she is the principal of [redacted] Primary School. [redacted] states that "[o]n [redacted] 2018, I participated in the jury of the original works of the [redacted] National Youth Recitation

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

Competition. I hereby prove that [the Petitioner] also participated in the jury work.” [] states that judges were selected by the competition’s organizing committee “from a nationwide selection of well-known educators, literary and artistic workers, and full-time youth workers.” Finally, she states that she, the Petitioner, and another judge awarded a total of 100 first, second and third prize awards out of 731 original works, noting that the “the works participating in the competition must have a certain level of literacy and be understood by the young and easy to recite,” with “selected works eligible to be reciting by the participating students in the national competition.”

The Director determined that the Petitioner did not satisfy the plain language of the criteria because the competition was for children or teenagers and therefore, she could not establish that she had judged the work of her “peers.” On appeal, the Petitioner emphasizes that she judged “literature works written for teenagers to recite on a national scale competition” and therefore established that she judged the work of other writers.

The language of the regulation requires that the Petitioner demonstrate that she participated “as a judge of the work of others in the same or an allied field of specialization.” We agree with the Petitioner that judging written works, regardless of the intended audience, would be within her field of specialization. However, we find insufficient evidence to establish that she actually participated as a judge in the competition. There is an unexplained inconsistency between the Petitioner’s dates of appointment ([] 2018”) and []’s statement that the Petitioner served as a judge for one day in [] 2018. The record does not contain evidence from the competition’s organizers or clarifying when the [] competition actually concluded in 2018 or in what stage the Petitioner participated as a judge. For these reasons, we find []’s letter alone insufficient to verify the Petitioner’s participation as a judge in the competition, and she has not established that she meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner’s commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the individual’s commercial success relative to others involved in similar pursuits in the performing arts.⁸

The Petitioner states that she meets this criterion based on the commercial success of []. In support of her claim, she submitted a letter from [], one of the film’s production companies. According to the letter [] “received box office receipts in the amount of RMB 216,053,160,63 which was the box office receipts champion for [] 2015 for Chinese language movies. It is a great success for an art movie.” The Petitioner stated that this figure was equivalent to over \$31 million at the time.

The Director determined that the Petitioner did not meet this criterion based on a finding that she “is not a performing artist” because her “field of endeavor defines [her] as a screen writer; thus not

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

meeting the plain language of this criterion.” On appeal, the Petitioner emphasizes that she should be credited with the commercial success of the film as its screenwriter and director.

However, we note that even if we determined that this criterion is applicable to the Petitioner based on her role as the [redacted]’s director and screenwriter, the record does not contain sufficient evidence corroborating the movie’s box office receipts or any supporting evidence demonstrating the commercial success of the film relative to that of others in the industry. Although the submitted letter from one of the film’s investors indicates that it was the highest grossing Chinese language film in [redacted] 2015, it is not accompanied by industry or media reports or comparable evidence to support this statement. We cannot make a determination regarding the film’s relative success without this evidence. Accordingly, the Petitioner did not establish that she meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.